FILED'06 APR 14 08:10USDC-ORE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

                Plaintiff,   Crim. No. 93-60022-06-HO

                v.   ORDER

ENRIQUE CISNEROS-SILVA,

                Defendant.

Defendant Enrique Cisneros Silva, pro se, filed a "motion to eliminate enhancements and reduce sentence." The government filed a response and motion to dismiss for lack of subject matter jurisdiction. For the reasons that follow, the government's motion to dismiss is granted. Defendant's motion is dismissed for lack of subject matter jurisdiction. In the alternative, defendant's motion is denied.

Discussion

Citing to United States v. Booker, 543 U.S. 220 (2005), defendant argues that he received an enhanced sentence based on

facts not admitted nor found by a jury beyond a reasonable doubt, in violation of the Sixth Amendment. Defendant's challenge to his sentence is construed as a motion to vacate, set aside or correct sentence authorized by 28 U.S.C. § 2255. So construed, the motion is a second or successive motion filed without required certification by the court of appeals, over which this court lacks jurisdiction. See 28 U.S.C. § 2255. Furthermore, Booker does not apply retroactively on collateral review. United States v. Cruz, 423 F.3d 119, 1120 (9th Cir. 2005). To the extent defendant otherwise presents a cognizable claim within the court's subject matter jurisdiction that his Sixth Amendment rights were violated by judicial fact-finding by a preponderance of the evidence at sentencing, he does not dispute the court's fact-finding, and is therefore not entitled to relief in any event. See United States v. Siegelbaum, 359 F. Supp. 2d 1104, 1106-08 (D. Or. 2005).

Conclusion

Based on the foregoing, the government's motion to dismiss, contained within its response, [#703] is granted; defendant's motion to eliminate enhancements and reduce sentence [#696] is
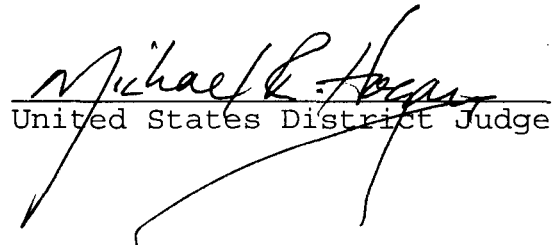
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2 - ORDER

dismissed for lack of jurisdiction; in the alternative,

defendant's motion [#696] is denied.

      IT IS SO ORDERED.

      DATED this _____ day of April 2006.

                                                                 _____

                                        United States District Judge